

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 International Markets Live, et al.,

4 Plaintiffs

5 v.

6 Scott Carney,

7 Defendant

Case No.: 2:18-cv-00187-JAD-GWF

**Order dismissing all claims against Scott
Carney for lack of personal jurisdiction
and granting leave to amend**

[ECF Nos. 22, 23]

8 International Markets Live (IML) and Christopher Terry sue Scott Carney for defamation
9 and tortious interference with contractual relationships and with prospective economic
10 advantage, stemming from statements Carney posted on his own Facebook page.¹ Carney moves
11 to dismiss, arguing that this court lacks personal jurisdiction over him, that venue is not proper in
12 this judicial district, and that plaintiffs have failed to state a claim.² Because plaintiffs'
13 allegations do not establish that Carney, a Florida resident, expressly aimed his conduct at
14 Nevada, I cannot conclude that he has sufficient minimum contacts with this state to justify
15 exercising long-arm jurisdiction over him. So, I dismiss plaintiffs' claims against Carney but
16 grant them leave to amend their complaint.

17 **Background**

18 Carney controls a company called Harmonic Trader, a non-party entity that is involved in
19 trading on the foreign currency ("Forex") markets.³ IML is a New York corporation that also
20 appears be involved in Forex trading and is somehow associated with Carney. In February 2016,

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¹ ECF No. 19 (first amended complaint).

23 ² ECF Nos. 22–23 (motion and corrected image); Fed. R. Civ. P. 12(b)(2), (3), (6).

³ ECF No. 19 at 2.

1 Carney traveled to Las Vegas, Nevada to meet with Terry about Forex trading techniques.
2 Together, they recorded videos on this topic from Terry's Las Vegas residence, but their
3 relationship has since degraded for some unstated reason. Carney emailed Terry at some point,
4 stating that he would "go on the offensive" if Terry didn't pay him \$50,000—a statement Terry
5 understood to mean that Carney would allege wrongdoings by IML to federal authorities. It
6 appears that Carney never paid the sum, and Carney filed a complaint against IML with the U.S.
7 Commodity Futures Trading Commission in January 2018.

8 That same month, Carney posted on his own Facebook page: "IML Federal Investigation
9 in FULL SWING! That's all I cansay [sic]."⁴ And over the next several months, Carney posted
10 several more times about IML, referencing this suit against him and accusing IML of infringing
11 on some form of intellectual property that he allegedly owns:

12 . . . Harmonic Traitor Update: iMarketsLive has filed a \$4million
13 [sic] defamation lawsuit against myself and 3 other individuals.
14 They know that I have a \$100 mil ip civil suit in the works! But
15 Chris, BIG MISTAKE! These [sic] deceit that you so easily
16 employ to grow your scheme in the name of my work is over! I
17 am filing both a SLAAP and countersuit, just in time for the big
18 iml Vegas Expo. If you [sic] an iml affiliate, DELETE ME NOW
19 and the REAL Harmonic TRADERS can stay tuned.
20 #HarmonicTakeover #imarketslive #ChrisTerry #harmonictraitors
21 #GetYoPopcorn

22 . . . Just recd [sic] 2nd complaint from imarketslive - serving me
23 papers twice on their \$4million [sic] defamation lawsuit. At this
point, it's harassment. If you are in iml, iml group or affiliated or
know someone who is, you need to know that your so-called
leaders are suing the very guy (ME) who created the work they are
copying. If you have any respect for me, my work and most
important, YOURSELF, LEAVE IML NOW! Any iml member or
rep that sends me a confirmed cancellation of imarketslive
membership will get GOLD MEMBERSHIP and SOFTWARE
FREE 30-days.

⁴ *Id.*

1 . . . #HarmonicTakeover #Dryland #HarmonicKarma #CFTCBitch
2 #30daystilimarketslivetakedown

3 . . . What's #HarmonicTakeover? The #iml Titanic! Have fun
4 rising in Vegas as you hit the iceberg while I watch from dry land!
30Days [sic].⁵

5 It appears undisputed that Carney posted these statements from outside of Nevada.⁶ Terry and
6 IML subsequently filed suit in this district.

7 Discussion

8 Because I dismiss the claims against Carney for lack of personal jurisdiction, I address
9 only that portion of his motion. The Fourteenth Amendment's Due Process Clause limits a
10 court's power to bind a nonresident defendant to a judgment in the state in which it sits.⁷
11 "Although a nonresident's physical presence within the territorial jurisdiction of the court is not
12 required," for a court to exercise personal jurisdiction, "the nonresident generally must have
13 'certain minimum contacts such that the maintenance of the suit does not offend 'traditional
14 notions of fair play and substantial justice.'"⁸ "There are two forms of personal jurisdiction that
15 a forum state may exercise over a nonresident defendant—general jurisdiction and specific
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18 ⁵ *Id.* at 7–8.

19 ⁶ See ECF No. 23 at 2 (Carney arguing that "none of the alleged conduct in the Amended
20 Complaint took place in Nevada"); ECF No. 25 (plaintiffs countering that "Carney wants this
Court to believe that he can sit behind the protection of his computer screen and spread across
the internet defamatory statements").

21 ⁷ *Walden v. Fiore*, 571 U.S. 277, 283 (2014). Because Nevada's long-arm statute grants courts
jurisdiction over persons "on any basis not inconsistent with" the U.S. Constitution, Nev. Rev.
22 Stat. § 14.065, the jurisdictional analyses under state law and federal due process are identical.
Walden, 571 U.S. at 283.

23 ⁸ *Walden*, 571 U.S. at 283 (ellipses omitted) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S.
310, 316 (1945)).

1 jurisdiction.”⁹ Because plaintiffs concede that Carney is not subject to general jurisdiction in
2 Nevada,¹⁰ I apply only a specific-jurisdiction analysis.

3 Specific jurisdiction depends on an “activity or an occurrence that takes place in [or is
4 purposely directed at] the forum State and is therefore subject to the State’s regulation.”¹¹ “In
5 contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of
6 ‘issues deriving from, or connected with, the very controversy that establishes jurisdiction.’”¹²
7 Courts in the Ninth Circuit apply a three-prong test to determine whether specific jurisdiction
8 over a defendant exists: “(1) the defendant must either ‘purposefully direct his activities’ toward
9 the forum or ‘purposefully avail[] himself of the privileges of conducting activities in the forum’;
10 (2) ‘the claim must be one which arises out of or relates to the defendant’s forum-related
11 activities’; and (3) ‘the exercise of jurisdiction must comport with fair play and substantial
12 justice, i.e. it must be reasonable.’”¹³ Plaintiffs bear the burden of satisfying the first two
13 prongs.¹⁴ In deciding whether this burden is met, I must accept as true the uncontroverted
14 allegations in the plaintiffs’ complaint, but a plaintiff cannot rely on “bare allegations” alone.¹⁵ I
15 also may review affidavits or declarations submitted by either side.¹⁶

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19 ⁹ *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008).

20 ¹⁰ ECF No. 25 at 2 n.1.

21 ¹¹ *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

22 ¹² *Id.* (internal citations and quotations omitted).

23 ¹³ *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017).

¹⁴ *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

¹⁵ *Id.* (quoting *Amba Mktg. Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977)).

¹⁶ *Id.*

1 Turning to the first prong, the terms “purposeful direction” and “purposeful availment”
2 describe two different analyses.¹⁷ Purposeful direction is appropriate for addressing suits
3 involving an intentional tort “where the tort was committed outside the forum state.”¹⁸ Because
4 the plaintiffs allege that Carney made tortious statements outside of Nevada that affected them
5 within this state, and because Carney avers he has no property or business interests in Nevada,¹⁹ I
6 apply a purposeful-direction framework. This prong of the specific-jurisdiction analysis involves
7 its own three-part test derived from the U.S. Supreme Court’s decision in *Calder v. Jones*.²⁰
8 Under *Calder*’s “effects” test, courts ask whether the defendant “(1) committed an intentional
9 act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to
10 be suffered in the forum state.”²¹

11 The first step is easily satisfied here because Carney is alleged to have committed
12 intentional torts.²² I therefore address whether this intentional conduct was expressly aimed at
13 Nevada. “The exact form of [this] analysis varies from case to case and ‘depends, to a
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16 ¹⁷ *Id.* at 802.

17 ¹⁸ *Freestream Aircraft (Bermuda) Ltd. v. Aero Law Grp.*, 905 F.3d 597, 605 (9th Cir. 2018).

18 ¹⁹ ECF No. 23-1 (Carney’s declaration). Plaintiffs point to one event that occurred within
19 Nevada: Carney recording Forex-related videos with Terry. ECF No. 25 at 2. But because
20 plaintiffs do not allege that these videos were defamatory or caused the tortious interference, the
21 videos are merely part of the factual backdrop to plaintiffs’ claims and are not relevant forum-
22 related activity. *See Schwarzenegger*, 374 F.3d at 802 (9th Cir. 2004) (“[T]he claim must be one
23 which arises out of or relates to the defendant’s forum-related activities . . .”).

21 ²⁰ *Axiom Foods*, 874 F.3d at 1069 (citing *Calder v. Jones*, 465 U.S. 783 (1984)).

22 ²¹ *Id.* (citation omitted).

23 ²² *See Picot v. Weston*, 780 F.3d 1206, 1214 (9th Cir. 2015) (“The meaning of the term
‘intentional act’ in our jurisdictional analysis is essentially the same as in the context of
intentional torts; namely, the defendant must act with the ‘intent to perform an actual, physical
act in the real world.’”).

1 significant degree, on the specific type of tort or other wrongful conduct at issue.’’²³ Plaintiffs
2 allege that Carney’s above-quoted statements harmed them in two related ways: damaging their
3 reputations and encouraging customers to stop using their services.²⁴ But based on the
4 allegations made, it is difficult to see how either tort was directed towards Nevada.

5 In the defamation context, Carney primarily accuses IML, a New York corporation with
6 no alleged Nevada connection, of “copying” his work—making only veiled references to Terry.
7 Carney does not assert that the conduct occurred in Nevada. And because he posted the
8 statements on his own Facebook page outside of Nevada, he had no discernable intent that the
9 statements be read primarily—or to any degree—by a Nevada audience. Nor is there reason to
10 believe that it was likely that his posts were read by anyone in Nevada other than Terry.
11 Likewise, plaintiffs have not asserted that any of the reputational injury they allegedly suffered
12 occurred in Nevada. And the two references Carney made to Las Vegas—one of which alludes
13 to a professional exhibition that IML may have been involved with in Las Vegas—do not mean
14 that he directed his comments towards Nevada—e.g., towards consumers attending the Las
15 Vegas expo. This case is thus starkly different from *Calder*, where the Supreme Court found that
16 a California court properly exerted jurisdiction over two Floridians who had written and edited
17 an allegedly libelous article written about a California actress, using California sources, and

18 ²³ *Id.* (quoting Schwarzenegger, 374 F.3d at 807).

19 ²⁴ *See, e.g.*, ECF No. 19 at 3 (“[Y]ou need to know that your so-called leaders are suing the very
20 guy (ME) who created the work they are copying. If you have any respect for me, my work and
21 most important, YOURSELF, LEAVE IML NOW!”). Carney argues that I should not consider
22 statements he allegedly posted to Facebook several months *after* plaintiffs filed suit in January
23 2018. ECF No. 26 at 2–3. But he cites to case law involving conduct that occurred after the
operative complaint was filed. *See, e.g., Farmers Ins. Exch. v. Portage La Prairie Mut. Ins. Co.*,
907 F.2d 911, 913 (9th Cir. 1990). By contrast, Carney’s posts occurred between the original and
first amended complaint and form the brunt of plaintiffs’ tort claims that are alleged in the latter,
operative complaint. It is thus appropriate for me to consider these statements in my
jurisdictional analysis.

1 extensively circulated in California, where the “brunt” of the actress’s reputational injury was
2 felt.²⁵

3 Plaintiffs’ claims for tortious interference with a contractual relationship and with
4 prospective economic advantage appear to stem from Carney allegedly encouraging IML
5 customers to cancel their “imarketslive membership”²⁶ Plaintiffs provide no details about
6 what services IML provides, but they appear to be internet-based, and there is no indication in
7 the complaint that IML customers are primarily located in Nevada. Nor have plaintiffs stated
8 how many customers or how much (actual or potential) revenue they believe they lost as a result
9 of Carney’s statements and what proportion of these losses they attribute to Nevada. Most
10 importantly, like with the defamation analysis, there is no indication that Carney targeted IML
11 customers in Nevada by, for instance, “tagging” known Nevada customers in his posts or posting
12 directly in Nevada-related Facebook groups, such as the Las Vegas Chamber of Commerce page.
13 Instead, plaintiffs allege that Carney posted the statements on his own page, which could likely
14 be viewed by anyone who followed him, and they have provided no indication that his online
15 following stems predominately from Nevada.

16 This suit is thus distinguishable from *Mavrix Photo, Inc. v. Brand Technologies, Inc.*,²⁷
17 the Ninth Circuit decision upon which plaintiffs primarily rely.²⁸ There, the court found specific
18 jurisdiction in California over an Ohio-based celebrity-gossip website that allegedly infringed on

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20 ²⁵ See *Walden v. Fiore*, 571 U.S. 277, 287 (2014) (quoting *Calder*, 465 U.S. at 788–89); see also
21 *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 773–74 (1984) (holding that “regular circulation
22 of magazines in the forum State is sufficient to support an assertion of jurisdiction in a libel
23 action,” as “regular monthly sales of thousands of magazines cannot by any stretch of the
24 imagination be characterized as random, isolated, or fortuitous”).

25 ²⁶ See ECF No. 19 at 3.

26 ²⁷ *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218 (9th Cir. 2011).

27 ²⁸ ECF No. 25 at 6.

1 the plaintiff’s copyright by posting the plaintiff’s celebrity photos on their site.²⁹ Addressing the
2 expressly aiming analysis, the court acknowledged that its prior decisions “have struggled with
3 the question whether tortious conduct on a nationally accessible website is expressly aimed at
4 any, or all, of the forums in which the website can be viewed.”³⁰ It ultimately found that the
5 website at issue provided minimum contacts, reasoning that the defendant “‘continuously and
6 deliberately exploited’ the California market for its website.”³¹ The defendant, the court
7 reasoned, “makes money by selling advertising space on its website to third-party advertisers: the
8 more visitors there are to the site, the more hits that are made on the advertisements; the more
9 hits that are made on the advertisements, the more money that is paid by the advertisers to [the
10 defendant]. A substantial number of hits to [the] website came from California residents.”³²
11 And the record revealed that some of these advertisers tailored their ads to California residents,
12 indicting that the defendant knew “—either actually or constructively—about its California user
13 base”³³ By contrast, there is no indictment here that Carney had any ties to Nevada through
14 his Facebook page. The mere fact that he made allegedly tortious statements on a
15 internationally-accessible website is not, by itself, sufficient to establish personal jurisdiction
16 here.

17 Nor is it sufficient, as plaintiffs suggest, that Carney knew Terry lives in Nevada.³⁴ In
18 *Walden v. Fiore*, “the Supreme Court rejected [the] conclusion that the defendants’ ‘knowledge
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20 ²⁹ *Id.* at 1221–22.

21 ³⁰ *Id.* at 1229.

22 ³¹ *Id.* at 1230.

23 ³² *Id.*

³³ *Id.*

³⁴ ECF No. 25 at 8.


1 of the *plaintiffs*’ “strong forum connections,” plus the ‘foreseeable harm’ the plaintiffs suffered
2 in the forum, comprised sufficient minimum contacts.”³⁵ “The Court made clear that [courts]
3 must look to the defendant’s ‘own contacts’ with the forum, not to the defendant’s knowledge of
4 a plaintiff’s connections to a forum.”³⁶

5 Because it appears here that the only connection between the plaintiffs’ claims and
6 Nevada is the fact that Carney knew that Terry lived in Las Vegas, I find that their allegations do
7 not establish that Carney expressly aimed his conduct towards this state and that personal
8 jurisdiction over him is therefore lacking. So, I dismiss all claims against Carney without
9 prejudice. And although I doubt that plaintiffs can cure the jurisdictional defects I have
10 identified, I grant them leave to amend their complaint if they can plead facts to do so.

11 Conclusion

12 IT IS THEREFORE ORDERED that Carney’s motion to dismiss for lack of personal
13 jurisdiction [ECF Nos. 22–23] is **GRANTED**. Plaintiffs’ claims against Carney are **dismissed**
14 **without prejudice**, and they may file an amended complaint within **20 days of this order** if they
15 can plead true facts to establish this court’s jurisdiction over Carney. Failure to timely file an
16 amended complaint will result in closure of this case.

17 Dated: January 29, 2019

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19 U.S. District Judge Jennifer A. Dorsey
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23 ³⁵ *Axiom Foods*, 874 F.3d at 1069–70 (emphasis added) (brackets omitted) (quoting *Walden*, 571 U.S. at 289).

³⁶ *Id.* at 1070 (quoting *Walden*, 571 U.S. at 289).